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Applicants:	Paula M. Sosalla et al.	Docket No.:	19,682
Serial No.:	10/748,411	T.C./A.U.:	3761
Confirmation No.:	7552	Examiner:	Hand, Melanie Jo
Filed:	December 29, 2003	Date:	September 21, 2007
For:	ARTICLE FEATURING AN INTERIOR GRAPHIC		

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

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BRIEF ON APPEAL (14 pages)

15 total pages, including this page

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For: ARTICLE FEATURING AN INTERIOR GRAPHIC

Brief on Appeal to the Board of Patent Appeals and Interferences

Mail Stop Appeal Brief - Patents
Commissioner For Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Pursuant to 37 C.F.R. 41.37 Appellants respectfully submit this Brief in support of their Appeal of Examiner Hand's **Final Rejection** of claims 1-24 which was mailed on April 30, 2007.

On July 30, 2007, Appellants, pursuant to 37 C.F.R. 41.31 mailed a timely Notice of Appeal. Thus, the time period for filing this Brief ends on September 30, 2007.

Real Party in Interest

The present Application has been assigned to Kimberly-Clark Worldwide, Inc.

Related Appeals and Interferences

There are no related appeals and/or interferences with regard to the present Application.

Status of Claims

Claims 1-24 remain in the application with claims 1-24 being finally rejected.
Claims 1-24 are the subject of this appeal.

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Status of Amendments

No amendments were filed after the final Office Action mailed April 30, 2007.

Summary of Claimed Subject Matter

The following summary correlates claim elements to specific embodiments described in the application specification, but does not in any manner limit claim interpretation. Rather, the following summary is provided only to facilitate the Board's understanding of the subject matter of this appeal.

Independent claim 1 is directed to an absorbent article (20), as representatively illustrated, for example, in Figs. 1-4. The absorbent article (20) defines a longitudinal direction (48) and a lateral direction (49) (paragraph 0022 and Figs. 2-4), an interior article surface (28), and an exterior article surface (30) opposite the interior article surface (28) (paragraph 0019). The absorbent article (20) includes an outercover (40) defining an interior outercover surface (62), and an exterior outercover surface (64) opposite the interior outercover surface (62) (paragraph 0025). The absorbent article (20) also includes an absorbent body (44) disposed on the interior outercover surface (62) (paragraph 0031). The absorbent article (20) also includes at least one interior graphic (90) disposed on the interior article surface (28) (paragraph 0042), wherein the at least one interior graphic (90) is an active graphic (paragraphs 0049-0054).

Dependent claim 10 is directed to the article of claim 1 wherein the at least one interior graphic (90) defines a total interior graphic area and wherein the total interior graphic area is at least 25 square cm (paragraph 0057).

Dependent claim 11 is directed to the article of claim 1 wherein the at least one interior graphic (90) defines a total graphic area and wherein the total interior graphic area is at least 45 square cm (paragraph 0057).

Dependent claim 13 is directed to the article of claim 1 further includes a plurality of interior graphics (90), wherein the plurality of interior graphics (90) defines a total interior graphic area and wherein the total graphic area is at least 25 square cm (paragraph 0057).

Independent claim 18 is directed to an absorbent article (20), as representatively

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illustrated, for example, in Figs. 1-4. The absorbent article (20) defines a longitudinal direction (48) and a lateral direction (49) (paragraph 0022 and Figs. 2-4), an interior article surface (28), and an exterior article surface (30) opposite the interior article surface (28) (paragraph 0019). The absorbent article (20) includes an outercover (40) and a bodyside liner (42) placed in superposed relationship with the outercover (40) (paragraph 0020). The absorbent article (20) also includes an absorbent body (44) sandwiched between the outercover (40) and the bodyside liner (42) (paragraph 0031), the outercover (40) disposed toward the exterior article surface (30) (paragraph 0025) and the bodyside liner (42) disposed toward the interior article surface (28) (paragraph 0027). The absorbent article (20) also includes at least one interior graphic (90) disposed on the interior article surface (28) (paragraph 0042), wherein the at least one interior graphic (90) is a fading graphic (paragraphs 0049-0054).

Independent claim 19 is directed to an absorbent article (20), as representatively illustrated, for example, in Figs. 1-4. The absorbent article (20) defines a longitudinal direction (48) and a lateral direction (49) (paragraph 0022 and Figs. 2-4), an interior article surface (28), an exterior article surface (30) opposite the interior article surface (28) (paragraph 0019), a first waist region (22), a second waist region (24), and a crotch region (26) connecting the first and second waist regions (22, 24) (paragraph 0019). The absorbent article (20) includes side panels (34, 134) extending from and connecting the first and second waist regions (22, 24) (paragraph 0020) in a pant configuration to form a waist opening (50) and a pair of leg openings (52) (paragraph 0021). The absorbent article (20) also includes an outercover (40) defining an interior outercover surface (62), and an exterior outercover surface (64) opposite the interior outercover surface (62) (paragraph 0025). The absorbent article (20) includes an absorbent body (44) disposed on the interior outercover surface (62) (paragraph 0031). The absorbent article (20) also includes at least one interior graphic (90) disposed on the interior article surface (28) (paragraph 0042), wherein the at least one interior graphic (90) is an active graphic (paragraphs 0049-0054).

Independent claim 24 is directed to an article (20), as representatively illustrated, for example, in Figs. 1-4. The article (20) defines an interior article surface (28) and an exterior article surface (30) opposite the interior article surface (28) (paragraph 0019). The article (20) includes an outercover (40) defining an interior outercover surface (62)

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and an exterior outercover surface (64) opposite the interior outercover surface (62) (paragraph 0025). The article (20) also includes at least one interior graphic (90) disposed on the interior article surface (28) (paragraph 0042), wherein the at least one interior graphic (90) is an active graphic (paragraphs 0049-0054).

Grounds of Rejection to be Reviewed on Appeal

Ground 1

Claims 1-9, 12, and 14-24 stand rejected under 35 U.S.C. § 102(b) as being anticipated and thus unpatentable, over U.S. Patent Publication No. 2004/0064113 by Erdman (hereinafter "Erdman").

Ground 2

Claims 10, 11, and 13 stand rejected under 35 U.S.C. § 103(a) as being obvious and therefore unpatentable over U.S. Patent Publication No. 2004/006411 by Erdman.

Argument

Ground 1 -- Rejection Of Claims 1-9, 12 and 14-24

Claims 1-9, 12, and 14-24 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Erdman. Appellants respectfully submit that the Examiner's rejection is improper and should be reversed.

Erdman is directed to a disposable absorbent article with a wetness/dryness indicator. Independent claim 1 of the present invention is directed to an absorbent article including, *inter alia*, an interior article surface and at least one interior graphic disposed on said interior article surface, wherein said at least one interior graphic is an active graphic.

The Appellants assert that Erdman fails to disclose an absorbent article including at least one active interior graphic disposed on an interior article surface. Erdman discloses appearing and disappearing graphics disposed on a back sheet, an absorbent core, or an intermediate material and visible through the back sheet of an absorbent article. At no point does Erdman disclose disposing an active graphic on an interior article surface. Neither does Erdman disclose, teach, or suggest how such an arrangement might be

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accomplished. Erdman does not disclose or enable how a graphic might be applied to an interior article surface, what inks or dyes might be used to avoid transfer to the wearer's skin, etc. Disposing a graphic on the interior article surface as in the present application allows the graphic to be more readily viewable than it would be when attempting to view it through a potentially semi-opaque article liner as proposed by Erdman.

In the Advisory Action mailed on July 27, 2007, the Examiner appears to argue that because each layer disclosed by Erdman must have two sides, one of those sides must face the exterior of the article (the garment side) and the other side must face the interior of the article (the body-facing side). This is true so far, but the Examiner takes it one step further and implies that because each layer has a side facing the interior, any one of these interior-facing sides can be the interior article surface. This is not true. The article can only have one interior surface. In the present application, the interior article surface 28 is provided in part by the interior liner surface 94 of the bodyside liner 42 (see paragraph 0028). Erdman does not define an interior article surface because it does not need to; the interior article surface has no bearing on the Erdman disclosure because Erdman does not disclose, teach, or suggest disposing an active graphic on an interior article surface.

Similarly, independent claims 18, 19, and 24 include the same element not disclosed, taught, or suggested by Erdman.

Accordingly, for at least these reasons, the Appellants respectfully submit that independent claims 1, 18, 19, and 24 are patentable over Erdman. Moreover, dependent claims 1-17 and 20-23, which all eventually depend from independent claims 1 or 19, are also accordingly patentable over Erdman.

For at least the reasons set forth above, Appellants respectfully request that all the rejections under 35 U.S.C. § 102(b) be withdrawn.

Ground 2 – Rejection Of Claims 10, 11 and 13

Claims 10, 11, and 13 stand rejected under 35 U.S.C. § 103(a) as being obvious and therefore unpatentable over Erdman. Appellants respectfully submit that the Examiner's rejection is improper and should be reversed. In particular, Erdman fails to

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teach or suggest all of the claim limitations.

To establish a *prima facie* case of obviousness, three basic criteria must be met: (1) there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings; (2) there must be a reasonable expectation of success; and (3) the prior art reference (or references when combined) must teach or suggest all the claim limitations. MPEP §2143.

Erdman does not teach or suggest all of the claim limitations of claims 10, 11, or 13, nor does the Examiner explain how one of ordinary skill would be motivated to modify Erdman, or how one of ordinary skill might anticipate success in modifying Erdman. As described above in more detail, at no point does Erdman disclose disposing an active graphic on an interior article surface. Neither does Erdman disclose, teach, or suggest how such an arrangement might be accomplished. Erdman does not disclose or enable how a graphic might be applied to an interior article surface, what inks or dyes might be used to avoid transfer to the wearer's skin, etc. Disposing a graphic on the interior article surface as in the present application allows the graphic to be more readily viewable than it would be when attempting to view it through a potentially semi-opaque article liner as proposed by Erdman.

For at least the reasons set forth above, Appellants respectfully request that all the rejections under 35 U.S.C. § 103 be withdrawn.

Conclusion

For the reasons stated above it is Appellants' position that the Examiner's rejection of claims has been shown to be untenable and should be **reversed** by the Board.

Please charge the \$500.00 fee (fee code 1402), pursuant to 37 C.F.R. 41.20(b)(2), for filing this Appeal Brief to Kimberly-Clark Worldwide, Inc. deposit account number 11-0875. Any additional prosecutorial fees which are due may also be charged to deposit account number 11-0875.

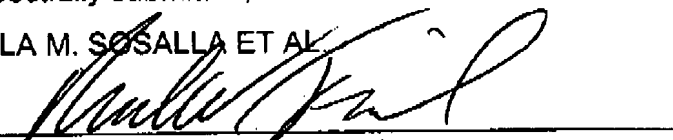
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The undersigned may be reached at: (920) 721-8863.

Respectfully submitted,

PAULA M. SOSALLA ET AL

By

A handwritten signature in dark ink, appearing to read 'Randall W. Fieldhack', is written over a horizontal line.

Randall W. Fieldhack

Registration No.: 43,611

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Claims Appendix

The claims on appeal are:

1. An absorbent article defining a longitudinal direction and a lateral direction, an interior article surface and an exterior article surface opposite said interior article surface, said article comprising:
 - an outercover defining an interior outercover surface, and an exterior outercover surface opposite said interior outercover surface;
 - an absorbent body disposed on said interior outercover surface; and
 - at least one interior graphic disposed on said interior article surface, wherein said at least one interior graphic is an active graphic.
2. The article of claim 1 wherein said active interior graphic is a fading graphic.
3. The article of claim 1 wherein said active interior graphic is an appearing graphic.
4. The article of claim 1 further comprising a bodyside liner placed in superposed relationship with said interior outercover surface, wherein said absorbent body is sandwiched between said outercover and said bodyside liner, and wherein said interior article surface is provided at least in part by said bodyside liner.

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5. The article of claim 4 wherein said bodyside liner defines an interior liner surface and an exterior liner surface opposite said interior liner surface, and wherein said interior graphic is applied on said exterior liner surface.
6. The article of claim 4 further comprising an interior graphic layer sandwiched between said absorbent body and said bodyside liner, and wherein said interior graphic is applied on said graphic layer.
7. The article of claim 6 wherein said interior graphic layer is a surge layer.
8. The article of claim 1 further defining a front waist edge, a back waist edge, and an article length in said longitudinal direction, wherein said interior graphic is spaced from said front waist edge in said longitudinal direction by between 25 % and 50 % of said article length.
9. The article of claim 1 further defining a front waist edge, a back waist edge, and an article length in said longitudinal direction, wherein said interior graphic is spaced from said front waist edge in said longitudinal direction by between 35 % and 60 % of said article length.
10. The article of claim 1 wherein said at least one interior graphic defines a total interior graphic area and wherein said total interior graphic area is at least 25 square cm.

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11. The article of claim 1 wherein said at least one interior graphic defines a total graphic area and wherein said total interior graphic area is at least 45 square cm.

12. The article of claim 1 further comprising a plurality of interior graphics.

13. The article of claim 12 wherein said plurality of interior graphics defines a total interior graphic area and wherein said total graphic area is at least 25 square cm.

14. The article of claim 1 further comprising at least one exterior graphic disposed on said exterior article surface.

15. The article of claim 14 wherein said at least one exterior graphic comprises a plurality of exterior graphics, and wherein at least one of said plurality of exterior graphics is an active graphic.

16. The article of claim 15 wherein said active exterior graphic is a fading graphic.

17. The article of claim 14 wherein said at least one exterior graphic defines an exterior graphic theme, and wherein said interior graphic is related to said exterior graphic theme.

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18. An absorbent article defining a longitudinal direction and a lateral direction, an interior article surface and an exterior article surface opposite said interior article surface, said article comprising:

an outercover;

a bodyside liner placed in superposed relationship with said outercover;

an absorbent body sandwiched between said outercover and said bodyside liner, said outercover disposed toward said exterior article surface and said bodyside liner disposed toward said interior article surface; and

at least one interior graphic disposed on said interior article surface, wherein said at least one interior graphic is a fading graphic.

19. An absorbent article defining a longitudinal direction and a lateral direction, an interior article surface and an exterior article surface opposite said interior article surface, a first waist region, a second waist region, and a crotch region connecting the first and second waist regions, said article comprising:

side panels extending from and connecting said first and second waist regions in a pant configuration to form a waist opening and a pair of leg openings;

an outercover defining an interior outercover surface, and an exterior outercover surface opposite said interior outercover surface;

an absorbent body disposed on said interior outercover surface; and

at least one interior graphic disposed on said interior article surface, wherein said at least one interior graphic is an active graphic.

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20. The article of claim 19 wherein said active interior graphic is a fading graphic.

21. The article of claim 19 comprising a bodyside liner placed in superposed relationship with said interior outercover surface, wherein said absorbent body is sandwiched between said outercover and said bodyside liner, and wherein said interior article surface is provided at least in part by said bodyside liner.

22. The article of claim 21 wherein said bodyside liner defines an interior liner surface and an exterior liner surface, and wherein said interior graphic is applied on said exterior liner surface.

23. The article of claim 21 further comprising an interior graphic layer sandwiched between said absorbent body and said bodyside liner, and wherein said interior graphic is applied on said graphic layer.

24. An article defining an interior article surface and an exterior article surface opposite said interior article surface, said article comprising:

an outercover defining an interior outercover surface, and an exterior outercover surface opposite said interior outercover surface; and

at least one interior graphic disposed on said interior article surface, wherein said at least one interior graphic is an active graphic.

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Evidence Appendix

None.

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Related Proceedings Appendix

None.